IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 7TH FEBRUARY 2007 / 18TH MAGHA 1928

Crl.MC.No. 3852 of 2006()

CMP.4915/2006 of JUDL. MAGISTRATE OF FIRST CLASS-I, KOCHI
CRIME NO.342 OF 2006 OF NARAKKAL POLICE STATION.

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PETITIONER: ACCUSED

NISHAD, S/O.GOPI,
CHATHANTHARA VEEDU,
THAYYAZHUTHAUVAZHI BAGOM,
NAYARAMBALAM KARA, NAYARAMBALAM VILLAGE.

BY ADV. SRI.K.A.JALEEL
SRI.P.M.MANASH

RESPONDENTS: COMPLAINANT

STATE OF KERALA,
(REP. BY THE CIRCLE INSPECTOR OF POLICE,
NARAKKAL POLICE STATION - CR.342/06 OF NARAKAL
POLICE STATION) - REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 07/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 3852 OF 2006

Dated this the 7th day of February, 2007

ORDER

The petitioner is the accused in a prosecution under Secs.279, 337, 338 and 304 of the IPC. He was allegedly driving a bus. It met with an accident. It hit against two motorcycles causing fatal injuries to the rider. It ultimately hit a compound wall of a house by the side of the road and stopped ultimately after hitting the house itself. Crime was registered initially under Sec.304-A of the IPC. In the course of investigation, allegation under Sec.304 of the IPC has been included. Investigation is pending. Final report has not been filed so far.

2. The petitioner's driving licence was seized by the police. The petitioner applied for return of the driving licence. The Investigating Officer has also filed a petition before the learned Magistrate to suspend the licence pending disposal of the proceedings – investigation and trial. The learned Magistrate by the impugned order suspended the

driving licence of the petitioner till the disposal of the case. Consequently, the application for release of the driving licence was also dismissed.

3. The petitioner has come to this Court complaining about the wrong, incorrect and illegal procedure followed by the learned Magistrate in suspending the licence pending investigation without any authority of law. Even if the worst were expected, the only allegation against the petitioner is that he has been grossly negligent and had ignored the consequences of his dangerous act. The learned counsel for the petitioner argues that the Code of Criminal Procedure or the Motor Vehicles Act and Rules do not clothe the Magistrate with powers to suspend a driving licence pending an investigation which is being conducted. In these circumstances, the learned counsel for the petitioner submits that directions to suspend the licence pending investigation deserves to be set aside.

4. I considered the question to be interesting. Does the Magistrate have powers to direct suspension of licence? Does the jurisdiction of the Magistrate at the end of the trial to direct disqualification and cancellation of licence clothe the learned Magistrate with the requisite powers to suspend such a licence

during the pendency of the investigation/trial?

5. The learned Director General of Prosecutions submits that to his knowledge, there is no provision under which a suspension of licence pending investigation can be resorted to by the Magistrate. I have been taken through the provisions of the M.V. Act and Rules. There is no specific provision empowering a Magistrate to direct the suspension of licence pending investigation. Does the power to finally direct disqualification or cancellation of licence clothe the Magistrate with the incidental power to suspend the licence pending investigation and trial? This is the short question to be considered.

6. At the moment, it may not be proper to jump to any conclusion about the complicity of the accused. Of course, there is a serious allegation raised against the petitioner. Investigation is not complete and it will be hazardous to venture an opinion about the complicity of the petitioner or the liability of his licence to be cancelled after completion of the investigation and trial. The principle that when a court is invested with substantial powers, all incidental and ancillary powers to make such initial conferment of substantive power effective and meaningful must be presumed cannot, according

to me, obviously be applied to the facts and circumstances of this case to justify suspension of licence pending investigation. The Case Diary has been placed before me for my perusal. I have perused the same. I am satisfied that the final order passed by the learned Magistrate suspending the licence pending investigation is not proper, correct or justified.

7. In the result:

(a) This Crl.M.C. is allowed.

(b) The impugned order is set aside.

(c) The course adopted by the learned Magistrate of suspending the driving licence pending investigation and trial is set aside.

(d) The learned Magistrate shall now consider the prayer for release of the licence afresh and pass appropriate orders.

(R. BASANT, JUDGE)

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